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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,279	01/22/2004	Francesca B. Kuglen	K551-003	9690
767	7590	07/05/2006	EXAMINER	
BEESON SKINNER BEVERLY, LLP ONE KAISER PLAZA SUITE 750 OAKLAND, CA 94612				DOAN, ROBYN KIEU
		ART UNIT		PAPER NUMBER
		3732		

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/764,279	KUGLEN, FRANCESCA B.
	Examiner	Art Unit
	Robyn Doan	3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 26-28 is/are allowed.
- 6) Claim(s) 1-15, 17-25 and 29-31 is/are rejected.
- 7) Claim(s) 16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 January 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/29/04, 1/26/05, 2/11/05, 5/31/05</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ruffio (U.S. Pat. # 1,665,380).

With regard to claim 1, Ruffio discloses a hair retainer (fig. 2) comprising two opposed combs (13), each of the combs having a spine (11) and parallel comb teeth (at 13) projecting from the spine and a stretchable elastic mesh (10, col. 2, lines 57-58, 71-72, fig. 2) secured to and extending between the spines of the combs.

Claims 1, 3, 4, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Selson (U.S. Pat. # 2,651,310).

With regard to claim 1, Selson discloses a hair retainer (fig. 1) comprising two opposed combs (9, applicant is noted that combs 9 attached to hairpieces 11 and attaching to the hair net 1 at several locations around the hair net), each of the combs having a spine and parallel comb teeth projecting from the spine, a stretchable elastic mesh (3, col. 1, lines 50-51) securing to and extending between the spines of the

combs. In regard to claims 3, 6, Selson shows the hair net inherently comprising interconnected elastic strands secured at spaced intervals to the spines of the opposed combs. In regard to claim 4, the elastic strands inherently being interconnected to form an elastic mesh of generally triangular shaped stretchable openings (fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 5 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruffio in view of JP Pat. # 409299131A.

With regard to claim 2, 5 and 12-14, Ruffio discloses a hair retainer comprising all the claimed limitations in claim 1 as discussed above except for the opposed combs being wire combs with metal spine and a row of looped wires to form projecting teeth; the length of the elastic mesh being between about three and one-half to four inches; the width of the combs and elastic mesh being between about three to four inches and the stretchable openings of the elastic mesh being of at least two different sizes. JP '131 discloses a comb (fig. 1) comprising a metal spine and a row of looped wires forming projecting teeth (5). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular comb as taught

by JP '131 into the hair retainer of Ruffio in order to provide flexibility to the teeth of the combs so they can easy to guide through the hair of the user. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the length of the elastic mesh being between about three and one-half to four inches and the width of the combs and elastic mesh being between about three to four inches and the stretchable openings of the elastic mesh being of at least two different sizes, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claims 7-9, 15, 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selson in view of Lorbiecki (U.S. Pat. # 1,564,079).

With regard to claims 7-9, 15 and 23-24, Selson discloses a hair retainer comprising all the claimed limitations in claim 6 as discussed above and further show the elastic mesh (3) having generally triangular stretchable openings (fig. 1) through which the wearer can pull an amount of hair if desired; Selson fails to show the filament strands being substantially clear and connector beads interconnecting the filament strands to form a decorative woven elastic mesh. Lorbiecki discloses a hair net (fig. 2) comprising a beaded mesh (fig. 2) comprising connector beads (8) interconnecting filament strands (3, 4) to form a decorative oven mesh (fig. 2). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the connector beads as taught by Lorbiecki into the hair retainer of Selson for

the purpose of enhancing attractiveness of the net when is worn by a person. It would also have been an obvious matter of design choice to construct the filament strands being substantially clear, since such a modification would involved a mere change in the matter of design choice.

Claims 10-11 and 17-19, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Selson in view of Lorbiecki as applied to claim 9 above, and further in view of Moffat (U. S. Pat. # 5,154,196).

With regard to claim 10-11 and 17, Selson in view of Lorbiecki discloses a hair retainer comprising all the claimed limitations in claims 9 and 15 as discussed above except for intermediate beads on the filament strands between the connector beads and wherein the number of intermediate beads between each connector beads being substantially the same; Selson in view of Lorbiecki fail to show the filament strand being threaded back and forth between the spines to produce eight strand segments woven through the connector beads. Moffat discloses a hair accessory (fig. 1) comprising two opposed clips (40) and a mesh member (10) extending between the clips, the mesh member having filament strands (32) and connector beads (40, see attachment A) and intermediate beads (40, see attachment A) between the filament strands and the connector beads, the number of intermediate beads between each connector beads being substantially the same (fig. 1). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the intermediate beads as taught by Moffat into the hair retainer of Selson in view of Lorbiecki for the

purpose of providing an aesthetic look to the device. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the eight strand segments, since such a modification would have involved a mere change in the design of the known component. (Applicant is also noted that prior art has shown the structure of the elastic mesh, the process of making it such as "threaded back and forth" is not given patentable weight in the article claim). In regard to claims 18-19, Selson in view of Lorbiecki and further in view of Moffat fail to show the shapes, colors and sizes of the connector, intermediate beads being selected and mixed to produce a desire decorative effect and the intermediate beads surrounding the connector beads being larger than other intermediate beads to accentuate the interconnections of the elastic mesh. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the shapes, colors and sizes of the connector, intermediate beads being selected and mixed to produce a desire decorative effect and the intermediate beads surrounding the connector beads being larger than other intermediate beads to accentuate the interconnections of the elastic mesh, since such a modification would have involved a mere change in the shape, size, color of the known components. A change in shape, size and color is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Selson in view of Lorbiecki as applied to claim 15 above, and further in view of JP '131.

With regard to claim 20, Selson in view of Lorbiecki discloses a hair retainer comprising all the claimed limitations in claim 15 as discussed above except for the opposed combs being wire combs with metal spine and a row of looped wires to form projecting teeth; the length of the elastic mesh being between about three and one-half to four inches; the width of the combs and elastic mesh being between about three to four inches and the stretchable openings of the elastic mesh being of at least two different sizes. JP '131 discloses a comb (fig. 1) comprising a metal spine and a row of looped wires forming projecting teeth (5). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular comb as taught by JP '131 into the hair retainer of Ruffio in order to provide flexibility to the teeth of the combs so they can easy to guide through the hair of the user.

Claims 29-31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuglen '086 in view of JP '131.

With regard to claim 29, Kuglen discloses two opposed combs (35, 36, fig. 2), each having a spine (37) and parallel comb teeth projecting from the spine, a plurality of elastic strands (11, 12, 14) extending between and secured at spaced intervals along the spines of the combs, the elastic strands forming stretchable openings (fig. 1) between the spines of the opposed combs through which the wearer can pull a desired amount of hair. Kuglen fails to show the opposed combs being wire combs with metal spine and a row of looped wires to form projecting teeth. JP '131 discloses a comb (fig. 1) comprising a metal spine and a row of looped wires forming projecting teeth (5). It

would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular comb as taught by JP '131 into the hair retainer of Kuglen in order to provide flexibility to the teeth of the combs so they can easily guide through the hair of the user. In regard to claims 30-31, Kuglen in view of JP '131 fail to show the width of each comb being about three to four inches and the distance between the spines when the elastic are unstretched, being between three and one-half to four inches. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the width of each comb being about three to four inches and the distance between the spines when the elastic are unstretched, being between three and one-half to four inches, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuglen '086.

With regard to claims 21, Kuglen discloses a hair retainer (fig. 2) comprising two opposed combs (35, 36), each having a spine (37) and parallel comb teeth projecting from the spine, an elastic mesh (11, 12, 14). Applicant is noted that to call elastic members 11-14 as a mesh is a matter of terminology because there is no further structure has been given to the device) connected between the spines, the elastic mesh having stretchable openings (openings between the elastic members 11-14) through

which the wearer can pull an amount of hair if desired (fig. 1). Kuglen fails to show the width of each comb being about three to four inches, the elastic mesh having a length between about three and one-half to four inches, when unstretched and a width being the same as the width of the combs. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the width of each comb being about three to four inches, the elastic mesh having a length between about three and one-half to four inches, when unstretched and a width being the same as the width of the combs, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level or ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). In regard to claim 22, Kuglen fails to show eight strands being secured at spaced intervals along the spines of the opposed combs and interconnected to form the elastic mesh between the combs. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct eight strands being secured at spaced intervals along the spines of the opposed combs and interconnected to form the elastic mesh between the combs, since such a modification would have involved a mere change in the size of the known component. A change in size is generally recognized as being within the level or ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 26-28 are allowable over prior art of record.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kennedy, Schach and Goodman are cited to show the state of the art with respect to a hair retainer.

The drawings filed 1/22/04 have been approved by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robyn Doan
Examiner
Art Unit 3732

Attachment A

